

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**MARY BLOODSWORTH and
JERRY BLOODSWORTH,**

Plaintiffs,

V.

SMITH & NEPHEW, INC.
et al.,

Defendants.

CASE NO. 2:05cv622-D

MOTION TO STRIKE

Defendant Smith & Nephew, Inc. (Smith & Nephew) moves the Court to strike portions of the affidavits of Mary & Jerry Bloodsworth (“the Bloodsworths”) filed in support of the Bloodsworths’ Motion to Remand on the grounds that they are based on inadmissible hearsay. In support of this Motion, Smith & Nephew states as follows:

1. Paragraphs 3 and 5 of Mary Bloodsworth's affidavit and paragraph 3 of Jerry Bloodsworth's affidavit contain inadmissible hearsay. *Fed. R. Evid.* 801 & 802.
2. Each of these paragraphs recites nothing more than statements allegedly made by Dr. Hodurski and/or his office personnel.
3. Because these paragraphs contain inadmissible hearsay they are due to be stricken. *See, e.g., Stoudemire v. Provident Life and Accident Ins. Co.*, 24 F. Supp. 2d 1252, 1257 n.3 (M.D. Ala. 1998) (granting defendant's motion to strike plaintiff's affidavit submitted in support of motion to remand as inadmissible hearsay).

s/ James C. Barton, Jr.

James C. Barton, Jr.

Bar Number: ASB-0237-B51J

Email: jbartonjr@jbpp.com

s/ James P. Pewitt

James P. Pewitt

Bar Number: ASB-7642-P62J

Email: jpewitt@jbpp.com

s/ Alan D. Mathis

Alan D. Mathis

Bar Number: ASB-8922-A59M

Email: adm@jbpp.com

Attorneys for Defendant
Smith & Nephew, Inc.

JOHNSTON BARTON PROCTOR & POWELL LLP

2900 AmSouth/Harbert Plaza

1901 Sixth Avenue North

Birmingham, Alabama 35203-2618

Telephone: (205) 458-9400

Facsimile: (205) 458-9500

OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the above and foregoing with the Clerk of the Court on August 15, 2005, using the CM/ECF system, which will send notification of such filing to the following:

Tom Dutton, Esq.
PITTMAN, HOOKS, DUTTON, KIRBY & HELLUMS, P.C.
2001 Park Place North, Suite 1100
Birmingham, Alabama 35203
(205) 322-8880

s/ Alan D. Mathis

Of Counsel

W0521077.WPD